

§ 152.15

(8) *Valuation and payment.* The Comptroller shall, as he or she may elect, either appoint one or more independent persons or direct appropriate staff of the OCC to appraise the shares to determine their fair market value, as of the effective date of the combination, exclusive of any element of value arising from the accomplishment or expectation of the combination. Appropriate staff of the OCC shall review and provide an opinion on appraisals prepared by independent persons as to the suitability of the appraisal methodology and the adequacy of the analysis and supportive data. The Comptroller after consideration of the appraisal report and the advice of the appropriate staff shall, if he or she concurs in the valuation of the shares, direct payment by the resulting association of the appraised fair market value of the shares, upon surrender of the certificates representing such stock. Payment shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Comptroller.

(9) *Costs and expenses.* The costs and expenses of any proceeding under this section may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section.

(10) *Voting and distribution.* Any stockholder who has demanded appraisal rights as provided in paragraph (c)(2) of this section shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of the combination): *Provided*, That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

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(11) *Status.* Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

§ 152.15 Supervisory combinations.

Notwithstanding the foregoing provisions of this part, the Comptroller may waive or deem inapplicable any provision of § 152.13 or § 152.14 of this part if he or she determines that grounds exist, or may imminently exist, for appointment of a conservator or receiver for an association under subsection 5(d) of the Home Owners' Loan Act.

§ 152.16 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

§ 152.17 Federal stock association created in connection with an association in default or in danger of default.

Sections 152.1 and 152.2 of this part do not apply to a Federal stock association which is proposed by the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation under section 5(p) of the Home Owner's Loan Act of 1933, section 11(c) of the Federal Deposit Insurance Act, or section 21A of the Federal Home Loan Bank Act, or is otherwise chartered by the OCC in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when and under such conditions as the OCC so determines.

§ 152.18 Conversion from stock form depository institution to Federal stock association.

(a) With the approval of the OCC, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank, may convert to a Federal stock association, provided that the depository institution,